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520(l)(1) of the act. This section applies only to devices that the Food and Drug Administration regarded as “new drugs” before May 28, 1976.

(b) The procedures for effecting reclassification under section 520(l) are as follows:

(1) The manufacturer or importer of the device files a petition for reclassification of the device in accordance with §860.123.

(2) Within 30 days after the petition is filed, the Commissioner notifies the petitioner of any deficiencies in the petition that prevent the Commissioner from making a decision on it, allowing the petitioner to supplement a deficient petition. Within 30 days after any supplemental material is received, the Commissioner notifies the petitioner whether the petition, as supplemented, is adequate for review.

(3) The Commissioner provides the petitioner an opportunity for a regulatory hearing conducted in accordance with part 16 of this chapter.

(4) The Commissioner consults with the appropriate classification panel with regard to the petition in accordance with §860.125.

(5) Within 180 days after the petition is filed (where the Commissioner has determined it to be adequate for review), the Commissioner, by order in the form of a letter to the petitioner, either denies the petition or classifies the device into class I or class II in accordance with the criteria set forth in §860.3(c).

(6) Within a reasonable time after issuance of an order under this section, the Commissioner announces the order by notice published in the FEDERAL REGISTER.

PART 861—PROCEDURES FOR PERFORMANCE STANDARDS DEVELOPMENT

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AUTHORITY: 21 U.S.C. 351, 352, 360c, 360d, 360gg–360ss, 371, 374; 42 U.S.C. 262, 264.

SOURCE: 45 FR 7484, Feb. 1, 1980, unless otherwise noted.

Subpart A—General

§861.1 Purpose and scope.

(a) This part implements section 514 of the Federal Food, Drug, and Cosmetic Act (the act) with respect to the establishment, amendment, and revocation of performance standards applicable to devices intended for human use.

(b) The Food and Drug Administration may determine that a performance standard, as described under special controls for class II devices in §860.7(b) of this chapter, is necessary to provide reasonable assurance of the safety and effectiveness of the device. Performance standards may be established for:

(1) A class II device;

(2) A class III device which, upon the effective date of the standard, is reclassified into class II; and

(3) A class III device, as a condition to premarket approval under section 515 of the act, to reduce or eliminate a risk or risks associated with such device.

(c) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21 unless otherwise noted.

[45 FR 7484, Feb. 1, 1980, as amended at 45 FR 23686, Apr. 8, 1980; 57 FR 58404, Dec. 10, 1992]

§861.5 Statement of policy.

In carrying out its duties under this section, the Food and Drug Administration will, to the maximum extent practical: